

**CITY OF MONTEREY PARK
EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made and entered into on the 7th day of August 2013, by and between the CITY OF MONTEREY PARK, a municipal corporation and general law city ("CITY") and RONALD BOW, an individual ("EMPLOYEE"). CITY and EMPLOYEE agree as follows:

1. **RECITALS.** This Agreement is entered into with the following understandings and objectives:

- A. CITY desires to employ EMPLOYEE as Public Works Director/Assistant City Manager of CITY.
- B. It is CITY's desire to provide certain benefits, establish certain conditions of employment and set working conditions of EMPLOYEE.
- C. It is CITY's desire to secure and retain EMPLOYEE and to provide inducement to remain in such employment; deter against malfeasance or dishonesty for personal gain on EMPLOYEE's part; and permit a reasonable means of terminating EMPLOYEE's services.
- D. EMPLOYEE desires to accept employment as Public Works Director/Assistant City Manager, pursuant to the terms and conditions herein set forth.

2. **DUTIES:** EMPLOYEE is appointed as CITY's Public Works Director/Assistant City Manager. CITY agrees to employ EMPLOYEE to perform all the functions and duties specified by statute and relevant CITY ordinances and resolutions for a Public Works Director/Assistant City Manager, and to perform such other legally permissible and proper duties and functions as CITY may from time to time assign.

3. **TERM:**

- A. This Agreement will become effective on September 14, 2013 and terminate three (3) years afterward ("Initial Term"). Unless terminated at least thirty (30) days before the anniversary date of this Agreement, the term will automatically renew on the anniversary date for successive one (1) year terms.

- B. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of the City Manager to terminate EMPLOYEE at any time subject to the provisions of this Section and Sections 4 and 4 of this Agreement.
- C. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of EMPLOYEE to resign at any time from his position with CITY, subject only to the provisions set forth in Section 4 of this Agreement.
- D. Except as otherwise provided EMPLOYEE agrees to remain in the exclusive employ of CITY and not become employed by any other employer until this Agreement lapses or is terminated. However, EMPLOYEE may, with the City Manager's written approval, engage in teaching activities while employed by CITY.

4. **TERMINATION:**

- A. EMPLOYEE serves at the City Manager's pleasure and may be terminated at any time, with or without cause.
- B. Subject to the terms of this Section, EMPLOYEE may receive a lump sum cash payment equal to three months of base salary ("severance pay"). As express conditions precedent of receiving severance pay, EMPLOYEE must execute the Separation and Release Agreement attached as Exhibit "A," and incorporated by this reference, within 30 days after EMPLOYEE's termination date and the Separation and Release Agreement must become effective pursuant to its terms. Failure to fulfill these conditions precedent will relieve CITY from any obligation to provide EMPLOYEE with severance pay.
- C. Should EMPLOYEE be terminated for Good Cause, then CITY has no obligation as to severance pay or any other benefit other than as required by applicable law. "Good Cause" means:
 - i. A material breach of the terms of this Agreement;
 - ii. Corrupt or willful misconduct in office;

- iii. Engaging in an activity that constitutes a felony, or that would constitute an act of moral turpitude (for example, driving while intoxicated, spousal or child abuse or endangerment, theft, perjury, or other similar acts); or
- iv. Engaging in an activity that constitutes a violation of state or federal laws or the City's personnel policies relating to employment discrimination, harassment, retaliation or committing an act that would constitute violence in the workplace.

D. Should EMPLOYEE voluntarily resign his position with CITY before expiration of the aforesaid term of employment, the EMPLOYEE must give CITY a minimum of thirty (30) calendar days prior written notice.

5. **REVOLVING DOOR.** EMPLOYEE must comply with Government Code § 87406.3 for a period of one year after separating from service with City. This section will survive termination of this Agreement.

6. **HOURS OF WORK:** EMPLOYEE is expected to work as many hours as necessary to satisfactorily fulfill the obligations of the position, including devoting necessary time outside normal office hours to the business of CITY.

7. **VACATION:** As of September 14, 2013, EMPLOYEE is credited with ____ (80) days of vacation leave. Thereafter, he will accrue vacation leave at the same rate and the same manner as a member of CITY's Management Team commencing with ____ (15) years of service (currently, 160 hours per year). Employee will not accrue any vacation time during the first six months of this contract.

8. **SICK LEAVE:** As of September 14, 2013, EMPLOYEE is credited with ____ (44) days of sick leave. Thereafter he will accrue sick leave at the same rate and in the same manner as members of the CITY's Management Team. Notwithstanding anything to the contrary in, without limitation, CITY's municipal code or personnel rules, EMPLOYEE may continue to accumulate sick leave without restriction. EMPLOYEE is vested with 100% of his sick leave upon executing this Agreement. Employee will not accrue any sick time during the first six months of this contract.

9. **HEALTH AND LIFE INSURANCE:** EMPLOYEE will receive the same health and life insurance benefits as other members of CITY's Management Team.

10. **SALARY:**

- A. Beginning September 14, 2013, CITY agrees to pay EMPLOYEE for services rendered pursuant to this Agreement an annual salary of \$170,000 which is payable in equal installments at the same time as other employees of CITY are paid.
- B. Annually, as determined by the effective date of this Agreement, the City Manager may, but is not required, to adjust EMPLOYEE's salary based upon EMPLOYEE's performance.

11. **RETIREMENT:** EMPLOYEE will be covered by CITY's PERS as a "miscellaneous employee" (as defined by PERS) and any modification to CITY's plans. CITY must pay the employer's share and EMPLOYEE must pay 100% of the employee's contribution to PERS, which is currently 8% of "compensation earnable."

12. **ADMINISTRATIVE LEAVE:** As of September 14, 2013, EMPLOYEE is credited with ____ (30) days of administrative leave. Thereafter, he will accrue vacation leave at the same rate and the same manner as a member of CITY's Management Team (currently, 60 hours per year). Employee will not accrue any administrative time during the first six months of this contract.

13. **OTHER BENEFITS:** Except as otherwise provided in this Agreement, EMPLOYEE is entitled to all of the employee benefits of CITY's Management Team.

14. **CHANGES:** This Agreement may be changed or amended by the mutual written consent of CITY and EMPLOYEE.

15. **BONDING:** CITY will pay for the cost of fiduciary bonds required of EMPLOYEE as a consequence of the exercise of his duties under this Agreement.

16. **INDEMNIFICATION:**

- A. CITY must indemnify and defend EMPLOYEE from any and all claims, demands, actions, losses, or charges arising out of, related to, or as a consequence of EMPLOYEE performing duties as Public Works Director/Assistant City Manager. Further, CITY must pay all expenses, costs and attorney's fees arising out of or related to the same.
- B. The Parties agree that this Section will survive the termination of this Agreement and EMPLOYEE's employment. CITY's obligations under

this Section apply whether EMPLOYEE is or is not employed by the CITY at the time any such claim, demand, action, loss or charge is made or occurs, as the case may be so long as the action giving rise to the claim occurred during the time EMPLOYEE was employed by CITY.

17. **PERFORMANCE EVALUATION**: The City Manager may evaluate EMPLOYEE at any time, and must provide a written evaluation of EMPLOYEE's performance on an annual basis. Such evaluations will become a part of EMPLOYEE's personnel file.

18. **WAIVER OF BREACH**: No waiver of the breach of any of the covenants, agreements, provisions, or conditions of this Agreement by either party will be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, provisions or conditions of this Agreement. No delay or omission of CITY or EMPLOYEE in exercising any right, power, or remedy herein provided in the event of default will be construed as a waiver thereof, or acquiescence therein.

19. **ENTIRE CONTRACT**: This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by CITY and EMPLOYEE.

20. **PARTIAL INVALIDITY**: Partial invalidity of this Agreement will not affect the remainder of this Agreement.

21. **VENUE**: This Agreement will be interpreted in accordance with California law and venue is in Los Angeles County.

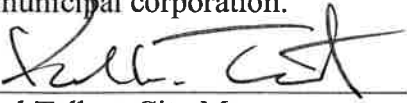
22. **BINDING EFFECT**: This Agreement is binding upon and inures to the benefit of the parties and their successors, heirs, agents and personal representatives.

23. **SEVERABILITY**: Each portion of this Agreement is separate and if any portion is found to be invalid by a court of competent jurisdiction, the remaining portions must each remain in full force and effect.

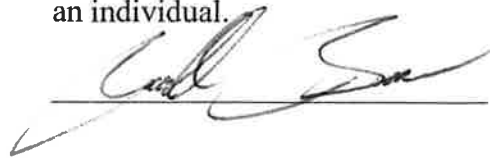
[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed this 20th day of August, 2013.

City of Monterey Park,
(a municipal corporation.


Paul Talbot, City Manager

Ronald Bow,
an individual.



ATTEST:


Vincent Chang, City Clerk

APPROVED AS TO FORM
MARK D. HENSLEY, City Attorney

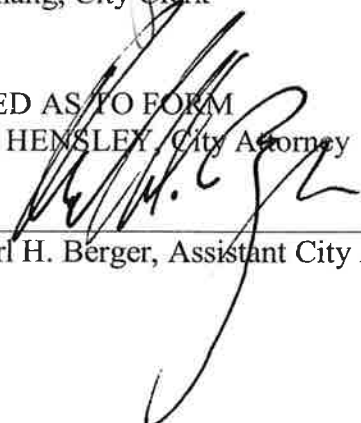
By: 
Karl H. Berger, Assistant City Attorney

EXHIBIT A

SEPARATION AND RELEASE AGREEMENT

1. PARTIES

This Separation, Severance and General Release Agreement ("AGREEMENT") is made and executed as of _____, 20__, by and between RONALD BOW ("BOW") and the CITY OF MONTEREY PARK ("CITY").

2. RECITALS

2.1 BOW commenced employment with the CITY as public works director/assistant city manager on or about September 14, 2013 pursuant to that EMPLOYMENT AGREEMENT entered into between the parties on or about August 7, 2013.

2.2 This AGREEMENT is made to amicably resolve all matters between BOW and the CITY regarding BOW's employment and the cessation of said employment.

2.3 The parties understand and agree that a material purpose of this AGREEMENT is to resolve any disputes and CLAIMS arising from or relating to BOW's employment with CITY, if any, and provide for a separation payment for BOW.

3. CONSIDERATION

3.1 In exchange for BOW's execution, faithful performance and compliance with this AGREEMENT, including without limitation the granting of the releases set forth herein, and in full satisfaction and settlement of BOW's CLAIMS, if any, the CITY shall pay BOW the sum of [insert amount of settlement in accordance with Section 3(A) and (C) of EMPLOYMENT AGREEMENT which shall not exceed 3 months of base salary and whatever leave payments are due BOW] ("SEVERANCE PAYMENT") in the form of a check made payable to RONALD BOW, to be delivered within 10 days of the EFFECTIVE DATE of this AGREEMENT. Required tax withholdings and deductions will be made from the SEVERANCE PAYMENT.

3.2 .Respecting the SEVERANCE PAYMENT referenced in paragraphs 3.1 above, BOW understands and agrees that the employees portion of any federal, state or local taxes, if any, that may be owed or payable on the sums caused to be paid hereunder by the CITY are the sole and exclusive responsibility of BOW.

3.3 BOW and the CITY shall otherwise each bear their own attorney fees and costs incurred in connection with any disputes and this AGREEMENT.

3.4 Except as set forth in this Paragraph 3, the parties agree that no other monies or benefits are due, owing or unpaid by reason of BOW's employment or association with CITY and that no other monies or benefits will be paid or maintained by CITY to/for

BOW, in BOW's name, or on BOW's behalf. BOW expressly agrees that the SEVRANCE PAYMENT described in Paragraph 3 supersede and are in substitution for any payments or benefits under any employment agreement(s), business agreement(s) or arrangement(s), oral or written promises, or severance policy or plan respecting or regarding his employment or association with CITY.

4. Specific Acknowledgement of Waiver of Claims under ADEA and OWBPA

The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act ("OWBPA", 29 U.S.C. §§ 626, *et. seq.*, Pub. L. 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary. By entering into this AGREEMENT, BOW acknowledges that he knowingly and voluntarily, for just compensation, waives and releases any rights he may have under the ADEA and/or OWBPA. BOW further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by BOW;
- (b) BOW is aware of, and/or has been advised of, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) BOW is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights he may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;
- (e) BOW has been advised by this writing that he should consult with an attorney **prior** to executing this AGREEMENT;
- (f) BOW has discussed, or had the opportunity to discuss, this waiver and release with, and been advised with respect thereto by, his counsel of choice, and that he does not need any additional time within which to review and consider this AGREEMENT;
- (g) BOW has **seven (7) days following his execution** of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to the CITY pursuant to this paragraph and must state, "I hereby revoke my acceptance of our 'Separation and Release Agreement;'" and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since BOW's execution of the AGREEMENT (the "EFFECTIVE DATE").

5. RELEASE

In exchange for the payment, representations and covenants made herein, and except only as to such rights or claims as may be created by this AGREEMENT, BOW hereby, and for his heirs, representatives, successors, and assigns, releases, acquits, and forever discharges the CITY, and all of its agents, officers, current and former elected and appointed officials, current and former employees, representatives, insurers, attorneys, and all persons acting by, through, under, or in concert with any of them, and each of them, from any and all claims (including without limitation all claims for workers compensation benefits, if any), charges, complaints, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which BOW now has or may acquire in the future, which relate to or arise out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred (including without limitation any circumstance(s) giving rise to liability for workers compensation benefits) or was in effect at any time from the beginning of time up to and including the EFFECTIVE DATE of this AGREEMENT ("CLAIMS"), without regard to whether such CLAIMS arise under the federal, state or local constitutions, statutes, rules, ordinances or regulations, workers compensation statutes or the common law. BOW expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims related to the DISPUTES, his employment with the CITY and its cessation, any claims for wages, overtime or benefits (including without limitation workers compensation benefits), any alleged breach of any duty, any alleged employment discrimination, harassment, retaliation or unlawful discriminatory act, any alleged breach of any express or implied employment contract, breach of any duty arising out of contract, statute, regulation, ordinance or tort, constructive discharge, wrongful termination or constructive discharge in violation of public policy, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting or respecting wrongful termination, breach of employment contract, or employment discrimination, employee injury, death, workers compensation, wrongful hiring, harassment or retaliation based upon sex, race, age, color, religion, handicap or disability, national origin or any other protected category or characteristic, including but not limited to the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, regulation, ordinance or decisional law.

Additionally, the CITY hereby agrees not to initiate, or proceed with any actions, causes of action, claims, etc., that could be or that have been asserted against BOW arising out of BOW's employment with the CITY, in any forum, whatsoever. To the extent that any such actions, causes of action, claims, etc., are, or become pending in any forum whatsoever, the CITY agrees to execute all documents necessary for the withdrawal of such actions, causes of action, claims, with prejudice, forthwith.

6. UNKNOWN CLAIMS

6.1 BOW' on the one hand, and the CITY, on the other hand, each hereby waive and release any rights which the other and its successors, heirs, executives, administrators, may have directly or indirectly, if any, jointly or severally, directly or indirectly, under the provisions of California Civil Code section 1542, and any similar state or federal statute, which reads in sum, substance or substantial part as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6.2 BOW and the CITY acknowledge that the facts with respect to which each gives this GENERAL RELEASE may turn out to be different from the facts they now believe to be true. BOW and the CITY hereby assume the risk of the facts turning out to be different, and agree that this AGREEMENT shall in all respects be effective and not subject to termination or rescission because of any such difference in facts.

7. WAIVER OF ADDITIONAL CLAIMS

BOW and the CITY hereby waive any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant hereto.

8. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represent and warrant and agree with each other party as follows:

8.1 No Other Claims: BOW and the CITY hereby represent and warrant that BOW nor the CITY has not filed, nor will they file in the future, any complaint, charge, claim, legal action, or proceeding arising out of BOW' employment with the CITY, the DISPUTES or the CLAIMS released hereby or in any way related to his employment with the CITY or separation therefrom with any court, agency, board, hearing officer or tribunal against the CITY or any of its agents, officers, current and former elected or appointed officials, current and former employees, representatives, insurers, attorneys, and all persons acting by, through, under, or in concert with any of them. BOW retains his right to request indemnification from the City pursuant to California Government Code Section 825 *et seq.* with respect to any action brought against BOW in his capacity as an employee.

8.2 Advice of Counsel: Each party has received, or has had the opportunity to receive, independent legal advice from their respective attorney(s) with respect to the advisability of making the settlement and releases provided herein, with respect to the advisability of executing this AGREEMENT, and with respect to the meaning of California Civil Code section 1542.

8.3 No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party (or of any officer, agent, employee, representative, or attorney of or for any party) in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

8.4 Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this severance and settlement and this AGREEMENT and all the matters pertaining hereto as it deems necessary.

8.5 Comprehension and Authority: Each party or responsible officer thereof has read this AGREEMENT and understands the contents hereof. Any of the officers executing this AGREEMENT on behalf of the CITY are empowered to do so and thereby bind the entity.

8.6 Mistake Waived: In entering into this AGREEMENT and the severance and settlement provided for herein, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to rescind or set aside the AGREEMENT. This AGREEMENT is intended to be and is final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

8.7 Later Discovery: BOW and the CITY are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is both parties intention to fully, finally and forever settle and release all such matters, and all claims relative hereto, which do now exist, may exist or have previously existed between both parties. In furtherance of such intention, the releases given here shall be and remain in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

8.8 Ownership of Claims: BOW represents and warrants as a material term of this AGREEMENT that he has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, BOW further represents and warrants that none of the CLAIMS released by his hereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

8.9 Future Cooperation: The parties will execute all such further and additional documents as shall be reasonable or necessary to carry out the provisions of this AGREEMENT.

9. MISCELLANEOUS

9.1 No Admission: Nothing contained herein shall be construed as an admission by the parties of any liability of any kind. The parties each deny any liability in connection with any claim or wrongdoing. Each party also intends hereby solely to amicably resolve all matters between the parties.

9.2 Governing Law: This AGREEMENT and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California. The venue for any dispute arising out of or relating to this AGREEMENT shall be the Los Angeles Superior Court.

9.3 Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

9.4 Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, and officials.

9.5 Joint Drafting: Each party has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the same shall not be construed against any party.

9.6 Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

9.7 Titles: The titles included in this AGREEMENT are for reference only and are not part of the terms of this AGREEMENT, nor do they in any way modify the terms of this AGREEMENT.

9.8 Counterparts: This AGREEMENT may be executed in counterparts, and by facsimile and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

9.9 Executed Copy: All parties shall receive a fully executed copy of this AGREEMENT.

9.10 Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to BOW:

RONALD BOW

As to the CITY:

Attn: City Clerk
City of Monterey Park

WHEREFORE, the parties hereto have read all of the foregoing, understand the same, and agree to all of the provisions contained herein.

DATED: _____

CITY OF MONTEREY PARK

By: _____
PAUL TALBOT, City Manager

DATED: _____

RONALD BOW

By: _____
RONALD BOW

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: _____
Karl H. Berger, Assistant City Attorney

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